



DEPARTMENT OF LABOR

Employment and Training Administration

Work Opportunity Tax Credit, Request for Comments regarding Proposed

Modifications to Procedural Guidance and Administrative Formula

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Employment and Training Administration (ETA) is proposing to reissue its Work Opportunity Tax Credit (WOTC) procedural guidance through a Change 1 to Training and Employment Guidance Letter (TEGL) No. 16-20, with some modifications; and modify its WOTC administrative formula for state allotments. ETA is also soliciting broader comments regarding potential improvements to WOTC, including policy and procedural guidance modifications. ETA's current procedural guidance for WOTC is available in TEGL 16-20, *Work Opportunity Tax Credit Procedural Guidance*, accessible at: https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8395. The administrative formula for WOTC is available in TEGL 03-21, *Work Opportunity Tax Credit (WOTC) Initial Funding Allotments for Fiscal Year 2022*, accessible at: https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3188. This Notice solicits comments regarding these proposed changes.

DATES: Any updated WOTC administrative formula will become effective October 1, 2023. Written comments on this Notice are invited and must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit comments in response to this Notice by postal mail to the Office of Workforce Investment, Attn: National WOTC Team, Room C-4510, 200 Constitution Avenue NW, Washington, DC 20210; or by email: Ask.WOTC@dol.gov. Please enter "2023 WOTC Federal Register Notice" in the subject line of the email. Commenters are

encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT: LaToria Strickland, Office of Workforce Investment, by email: Strickland.LaToria.M@dol.gov, or call 202-693-3980. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY-TDD).

SUPPLEMENTARY INFORMATION: This Notice represents the first of a two-stage process. ETA is publishing this Notice requesting public comments regarding proposed modifications to its WOTC procedural guidance and administrative formula. In the final stage, ETA will publish any modifications for procedural guidance in a TEGL, and will publish the updated administrative formula, using the most recent fiscal year performance data available, in the *Federal Register*. Based on Congress' budgetary appropriations for Fiscal Year (FY) 2024, ETA plans to announce WOTC allotments for state grantees by issuing a funding allotment TEGL based on an updated administrative formula. (Note that ETA disbursed FY 2023 WOTC allotments based on the existing administrative formula). Pending comments received through this Notice, ETA plans to issue a Change 1 to TEGL 16-20 to update its procedural guidance for WOTC. The proposed revised guidance will allow State Workforce Agencies (SWAs) to place a greater emphasis on process improvement, program efficiency, and better alignment with the requirements of section 51 of the Internal Revenue Code of 1986, as amended (the Code, available at: [https://uscode.house.gov/view.xhtml?req=\(title:26%20section:51%20edition:prelim\)\)](https://uscode.house.gov/view.xhtml?req=(title:26%20section:51%20edition:prelim)))). Although not required by federal statute or regulations, ETA is seeking public comment

and opinions on its proposed guidance, including feedback on areas where ETA may need to clarify procedural guidance to address ongoing concerns, such as policies related to authorized representatives, as well as comments on the proposed administrative formula modifications. Additionally, ETA is requesting information on additional means to improve the WOTC as an incentive for employers to hire job seekers with barriers to employment. Stakeholders, including SWAs, employers, researchers and advocates, are encouraged to provide comments on modifications to the WOTC certification process, including suggestions for program improvement, as outlined in sections II, III and IV of this Notice. This Notice includes the following sections:

- Section I of this Notice provides a background of WOTC procedural guidance, and the current administrative formula used to determine state funding allotments.
- Section II requests comments on proposed modifications to WOTC procedural guidance.
- Section III requests recommendations for WOTC program improvements.
- Section IV describes the proposed modifications to the administrative formula.
- Section V provides planning estimates and describes the stop-loss/stop-gain provision for the proposed administrative formula implementation year, FY 2024, and subsequent years.
- Section VI describes formula provisions to address state grantees that would receive less than the minimum state allotment amount in annual funding under the proposed new formula.
- Section VII is a table detailing the impact of proposed changes on funding amounts for FY 2024 using the modified formula, and a comparison to actual FY 2022 funding allotments.

I. Background

WOTC is a federal tax credit available to eligible employers that hire and pay wages to first-time, qualifying members of WOTC targeted groups. WOTC is authorized until December 31, 2025, under the Consolidated Appropriations Act, 2021 (Public Law 116-260), Division EE, Title I, section 113 (“the Act”). The U.S. Departments of Labor and Treasury jointly administer the WOTC. The U.S. Department of the Treasury, through the Internal Revenue Service (IRS), administers all tax-related provisions of the WOTC. The U.S. Department of Labor, through ETA, oversees the administration of some WOTC functions, including the allotment of grant funding to SWAs, and the development of guidance and technical assistance to ensure WOTC state and regional coordinators are equipped to implement any legislative updates in procedural guidance. SWAs are the statutorily designated state agencies authorized to administer the WOTC certification process in accordance with section 51 of the Code.¹

To claim the work opportunity credit, an employer must pre-screen and obtain certification from the appropriate Designated Local Agency (referred to as a State Workforce Agency or SWA) that an employee is a member of a targeted group. To satisfy the requirement to pre-screen a job applicant, on or before the day that a job offer is made, a pre-screening notice (IRS Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit*) must be completed by the job applicant and the employer. Employers submit WOTC certification requests (IRS Form 8850 and other required ETA forms), to the SWA of the state in which the employer’s business is located. SWAs manage a growing workload of an estimated eight million certification requests annually. Annual WOTC performance reports for fiscal years 2018-2022 are available online at: <https://www.dol.gov/agencies/eta/wotc/performance>. On a quarterly basis, about 40 percent of the national workload is comprised of “incomplete requests.”

¹ The statute refers to SWAs as State Employment Security Agencies (SESA), established in accordance with 29 U.S.C. 49.

An employer’s certification request is considered “incomplete” when it does not include supporting documentation, as required for targeted group eligibility determination, and/or required ETA processing forms (e.g., ETA Form 9061 or 9062). Incomplete certification requests for which the SWA cannot issue a determination (certification or denial) by the end of a reporting quarter become part of the SWA’s “requests needing action” or pending count. At the close of FY 2021, approximately 30 percent of the national workload was categorized as pending (backlogged) applications, awaiting additional information for the SWAs to issue determinations.

In FY 2020 through 2022, Congress appropriated additional funding to support SWA efforts in reducing the backlog of WOTC certification requests.² ETA distributed these funds to selected states with the most critical need to alleviate their backlogs and/or modernize their WOTC processing systems. To expand upon these efforts, ETA identified additional opportunities to improve the WOTC administrative process, which are described in Section II of this Notice. The proposed modifications to WOTC procedural guidance will help prevent additional backlogs for SWAs, resulting in more timely determinations for employers seeking the WOTC.

Additionally, in this Notice, ETA proposes modifications to its administrative formula to factor in the SWAs’ output workload and make adjustments for inflation. ETA developed the WOTC administrative formula in 1996 to distribute federal funding to 53 state grantees (50 United States, District of Columbia, Commonwealth of Puerto Rico, and U.S. Virgin Islands). The current administrative formula is calculated as follows:

- a. **50 percent** is based on each state’s relative share of total WOTC certifications issued from the prior fiscal year (October 1 – September 30),

² Congress authorized an additional \$2,500,000 in funding in FY20 and FY21, and an additional \$3,500,000 in funding in FY22, to support SWAs’ efforts to reduce processing backlogs and assist states in adopting or modernizing information technology for processing of certification requests. For additional details, see TEGL 13-19, Change 1, TEGL 06-20, Change 1 and TEGL 03-21, Change 2 on the ETA Advisory webpage, available at: <https://www.dol.gov/agencies/eta/advisories>.

- b. **30 percent** is based on each state's relative share of the Civilian Labor Force averages for the 12-month period from the prior fiscal year, and
- c. **20 percent** is based on each state's relative share of adult recipients of Temporary Assistance for Needy Families (TANF) averages for the 12-month period from the second preceding fiscal year.

The formula's original methodology is described in the *Federal Register Notice* 68 FR 15745, April 1, 2003, accessible at: <https://www.federalregister.gov/>.

II. Request for comments on proposed modifications to WOTC Procedural Guidance

The proposed modifications are a result of ETA's review of SWA quarterly performance data,³ WOTC state/regional coordinators' feedback, and inquiries received from the public and other stakeholders⁴ on TEGL 16-20, *WOTC Procedural Guidance*. ETA requests comments from stakeholders regarding the following proposed modifications to WOTC procedural guidance, and requests that commenters state the section sub-heading(s) for which each comment is associated. ETA proposes the following modifications to WOTC procedural guidance:

- A. Apply the same timely submission requirements for IRS Form 8850 and ETA Form 9061 and ETA Form 9062.** To verify that an employer's new hire is a member of a WOTC targeted group, SWAs use the information provided on IRS Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit*, together with supporting documentation, and: 1) ETA Form 9061, *Individual Characteristics Form*; or 2) ETA Form 9062, *Conditional*

³ SWAs submit quarterly performance reports using ETA Form 9058 via web-based Tax Credit Reporting System of the Enterprise Business Services System.

⁴ ETA receives inquiries from the public and other stakeholders through its WOTC email account, Ask.WOTC@dol.gov.

*Certification.*⁵ Under section 51(d)(13) of the Code, employers must submit IRS Form 8850 to the SWA of the state in which their business is located (where the employee works), generally no later than the 28th calendar day after the employee begins working for the employer. Receiving the ETA Forms separately from IRS Form 8850 creates significant processing delays for SWAs during the certification process and weakens the purpose of the 28-day timely submission requirement. ETA is proposing to update its procedural guidance for SWAs to require that employers submit all required WOTC forms concurrently, preferably as a single submission. ETA will modify its procedural guidance to apply the Code's timely submission requirement for IRS Form 8850 to ETA Forms 9061/9062, which will result in more efficient processing, reduce the number of "pending" certification requests, prevent additional application backlog, and ensure that the purpose of the 28-day submission requirement is fulfilled. Rather than allow employers to submit ETA Forms after the Code's timely submission requirement for IRS Form 8850, ETA will require employers to submit all required WOTC forms no later than the 28th calendar day after the employee begins working for the employer. When an employer does not submit the required WOTC forms by the timely submission deadline, the SWA will issue a denial notice to the employer. SWAs will not be required to review employers' appeals of denials that were issued due to failure to meet the timely-submission requirement unless the question of timely submission is the subject of the appeal.

B. When employers request additional time to submit required supporting documentation with a certification request, SWAs will not issue a determination for an additional 90 calendar days after the 28-day timely

⁵ ETA Form 9061, *Individual Characteristics Form*, and ETA Form 9062, *Conditional Certification*, are used during the WOTC certification process to provide detailed information on targeted group eligibility. The forms and additional information are available at <https://www.dol.gov/agencies/eta/wotc/how-to-file>.

submission requirement deadline. Under the procedural guidance changes proposed above in Section II.A. of this Notice, ETA would require employers to submit the appropriate ETA Form (9061/9062) together with the IRS Form 8850 within 28 calendar days of the new hire's start date. However, ETA recognizes there are some circumstances when an employer may need additional time to collect and submit supporting documentation to complete a certification request. Without the required supporting documentation, SWAs are unable to verify that an employer hired a qualifying member of a WOTC targeted group. Current procedural guidance requires SWAs to issue a 'Denial Pending More Information letter,' also known as an 'Employer Needs Letter,' to notify employers when required supporting documentation is missing for a certification request. If an employer does not submit the necessary supporting documentation within 90 days from the date the SWA issued the Employer Needs Letter, the SWA will deny the certification request. After an employer receives a denial from a SWA for a complete, timely filed certification request, an employer may submit a written appeal to the SWA within one year from the date the SWA issued the denial letter. As part of the appeal, employers submit clarifying information that was not submitted with the original certification request, or an explanation of where the employer believes the SWA misinterpreted information during their determination review. SWAs will review the clarifying information and redetermine the denial, as appropriate. Review of annual WOTC performance data shows that approximately 40 percent of all certification requests result in denials.⁶ The administrative procedures that are in place to manage incomplete requests require SWAs to spend a significant amount of time issuing 'Denial Pending More

⁶ WOTC annual performance reports for fiscal years 2017-2021, available at: <https://www.dol.gov/agencies/eta/wotc/performance>.

Information’ letters for employers, as well as reviewing appeals of denied requests that did not meet the requirements of the Code. This increases the overall number of pending/backlog applications and places an extensive administrative burden on the SWAs that delays certification for other employers.

ETA is proposing to modify its procedural guidance to allow SWAs to not issue a determination for an additional 90 calendar days, beginning with the day after the 28th calendar day timely submission requirement date, when employers simply check the corresponding box on ETA Form 9061 to request additional time to submit required supporting documentation with their WOTC certification request. Doing so will reduce the administrative burden on the SWAs to issue Employer Needs Letters, while granting employers additional time to submit supporting documentation for qualifying first-time hires that meet the targeted group eligibility requirements of the Code. Employers will continue to have the more efficient option of submitting supporting documentation with a completed IRS Form 8850 and ETA Form 9061/9062, all within 28 calendar days of the new hire’s start date. SWAs will process these complete certification requests and issue determinations (certification or denial) based on the information provided on IRS Form 8850, ETA Form 9061/9062, and supporting documentation. However, if employers need additional time to submit supporting documentation that is not readily available within the 28-day window, employers will have the secondary option to specify that the supporting documentation is ‘forthcoming’ in box 24 of ETA Form 9061. SWAs will follow the procedural guidance detailed below for when supporting documentation is noted as ‘forthcoming’ with submission of ETA Form 9061.

i) Employer marks “documentation forthcoming” on ETA Form 9061.

When an employer marks that supporting documentation is forthcoming

on ETA Form 9061, the employer will have an additional 90 calendar days (beginning the day after the 28th calendar day submission requirement) to submit the required supporting documentation for the targeted group(s) specified on IRS Form 8850 and ETA Form 9061. The SWA will not process the certification request until after the 90th day. If an employer does not submit the supporting documentation by the 90-day deadline, the SWA will process the certification request as is, based on any targeted group eligibility data that is available to the SWA, and issue a final determination. SWAs will follow the guidelines outlined below:

- The SWA does not need to delay issuing a final determination (certification or denial) if the employer does not specify that documentation is forthcoming in box 24 of ETA Form 9061.
- The employer will have up to 90 calendar days (beginning the day after the 28th calendar day timely submission requirement for IRS Form 8850 and ETA Form 9061/9062) to submit the additional (forthcoming) documentation, after which the SWA will process the certification request to determine eligibility for the targeted group(s) selected on IRS Form 8850 and ETA Form 9061, using the information submitted by the employer and/or the SWA's available data.
- If the employer submits the required supporting documentation within the 90-day calendar deadline, and the SWA did not consider the submitted documentation when issuing the determination, the employer may appeal the determination. The SWA will then review and redetermine the request based on certification requirements of the

Code, taking into consideration the additional supporting documentation submitted.

- The SWA will deny a certification request that is missing supporting documentation after the 90-day calendar deadline, and for which the SWA is unable to verify targeted group eligibility using internal data sources available to the SWA. If the employer appeals the SWA's determination (either a denial, or a certification for an alternative targeted group that yields a lesser tax credit), the SWA is not required to process the employer's appeal. The decision to process employers' appeals will be at the discretion of the SWA. ETA encourages SWAs to update their WOTC state policies and standard operating procedures to notify employers of their state-specific policy on appeals and redeterminations.

Depending on the targeted group(s) specified on IRS Form 8850, SWAs may have internal access to data needed to verify that an individual meets targeted group eligibility requirement(s), such as wage records for long-term unemployment recipient (LTUR) determinations, with or without supporting documentation provided by employers. Prior to application submission, employers should confirm which data sources are accessible to the SWA, and which targeted groups require the employer to submit supporting documentation. SWAs must update their WOTC websites to communicate examples of supporting documentation that are acceptable for each targeted group, and which data sources are available to the SWA for eligibility determinations.

ii) Employer does not mark “documentation forthcoming” on ETA Form 9061. When an employer does not specify that documentation is

forthcoming on ETA Form 9061, the SWA will immediately process the certification request as is, using the submitted supporting documentation and/or available internal data sources. SWAs will use information and data sources available at the time the certification request is processed to issue final determinations. SWAs will follow the guidelines outlined below for when supporting documentation is not noted as ‘forthcoming’ with submission of ETA Form 9061:

- The SWA will immediately process certification requests based on the targeted group(s) specified on IRS Form 8850 and ETA Form 9061/9062, and the supporting documentation and/or SWA’s available data.
- Employers often specify more than one targeted group on IRS Form 8850. Depending on available data sources and automated processing capabilities, SWAs may be able to verify targeted group eligibility for multiple targeted group(s) simultaneously. If an employer does not submit supporting documentation for the targeted group(s) specified on their WOTC certification request, the SWA will verify eligibility for any targeted group(s) that are specified on the IRS and ETA Forms, for which the SWA has available data. Based on the applicant’s targeted group eligibility verification results, the SWA will issue a certification for the employer for the targeted group yielding the highest available tax credit for the employer.
- If 1) the employer does not indicate that supporting documentation is forthcoming on ETA Form 9061, 2) the employer does not submit any supporting documentation within 28 calendar days of the new hire’s start date, and 3) the SWA cannot verify eligibility for any WOTC targeted group selected on the IRS/ETA Forms, then the SWA will

issue a denial notice to the employer. The denial is not eligible for employer appeal. However, an employer may appeal to have the SWA redetermine a certification that was issued for an alternate targeted group that was also initially selected on the certification request (IRS Form 8850 and ETA Form 9061) and would yield a higher tax credit than the targeted group certified by the SWA. In this circumstance, the employer appeal would be to submit new supporting documentation for the alternative targeted group that was also selected on the original IRS Form 8850.

- SWAs must review employer appeals for denials issued, so long as the original application (IRS form 8850 and ETA Form 9061/9062) was complete and timely submitted to the SWA. However, ETA will not require SWAs to review employer appeals for a certification redetermination. For example, if a SWA makes an eligibility determination for a targeted group, ETA will not require the SWA to process an employer's appeal for a certification redetermination for an alternate targeted group with a higher tax credit. The SWA has the discretion whether to process any such employer appeal of a certification. ETA encourages SWAs to update their WOTC state policies and standard operating procedures to notify employers of their state-specific policy on appeals and redeterminations.

C. Verify that an employer's certification request is for a first-time, qualifying

hire. In addition to verifying that an individual is in a WOTC targeted group, ETA is proposing to update its procedural guidance to require SWAs to verify that an

employer is seeking WOTC certification for a “first-time hire.”⁷ A “first-time hire” is an individual that has not, at any time, been employed by the employer seeking certification prior to the hiring date the employer provides on IRS Form 8850. SWAs will compare available wage data with the information that an employer provides on the IRS Form 8850, including the employer identification number (EIN), employee’s social security number, and hire date, to verify that: 1) the person is receiving wages from the employer; and 2) the person did not receive wages from the employer prior to their hire date. SWAs will check for wage records preceding the new employee’s hire date, based on the availability of data and SWA capacity. Some states have begun to implement this practice and shared that doing so allows the SWA to identify which certification requests meet the requirements of the Code at the onset of the certification process, before investing time and resources on ineligible applications, including non-qualifying rehires. Additionally, by incorporating this step into the verification process, SWAs will ensure that they are processing certification requests that have been submitted to the appropriate SWA (state where the employer’s business is located), per the instructions for IRS Form 8850. Wage verification helps prevent SWAs from processing duplicate certification requests when an employer submits the same certification request for a new hire to multiple SWAs for processing. When a SWA is not able to confirm that an employer is requesting certification for a “first-time hire” who is a qualifying member of a targeted group, the SWA will issue a denial notice. ETA will not require SWAs to review employers’ appeals for certification requests that do not meet the requirements of section 51(i)(2) of the Code, “Nonqualifying Rehires,” which states “No wages shall be taken into account with

⁷ Pursuant to section 51(i)(2) of the Code, a non-qualifying rehire may not qualify an employer for the tax credit if, prior to the hiring date, the person was employed by the employer at any time.

respect to any individual if, prior to the hiring date of such individual, such individual had been employed by the employer at any time.”

D. Discontinue use of IRS Form 2848, *Power of Attorney and Declaration of Representative*, for WOTC purposes. Under current procedural guidance, an employer may choose to authorize an individual to represent them for WOTC purposes by submitting an IRS Form 2848, *Power of Attorney and Declaration of Representative*, to a SWA. SWAs collect, retain, and track updates to employers’ IRS Form 2848 Power of Attorney as part of their administrative responsibilities. A power of attorney gives one or more persons the power to act on a person’s behalf as their agent. The power may be limited to a particular activity or be general in its application. IRS Form 2848 is a Power of Attorney (POA) declaration form used to authorize an individual to represent a taxpayer before the IRS. ETA recognizes the concerns raised by SWAs and employers/consultants regarding IRS Form 2848 instructions, and its applicability to WOTC. Employers will be able to use an ETA *Employer Representative Declaration Form* to authorize a representative(s) to facilitate the WOTC certification request process on their behalf. The ETA Form will not constitute a formal power of attorney arrangement between the employer and its representative but will authorize the representative to conduct WOTC business with SWAs on behalf of the employer (see TEGL 16-20 for the list of authorized activities). SWAs will be responsible for managing employer representative declarations, including if and how an employer may authorize multiple representatives, according to ETA’s recordkeeping policy for WOTC.⁸ In general, formal power of attorney designations should not be required for employer representatives to conduct

⁸ See ‘Recordkeeping for SWAs’ in TEGL 16-20, *WOTC Procedural Guidance*, for additional information.

WOTC business with SWAs, and ETA discourages SWAs from imposing additional requirements for documenting employer representative declarations beyond the requirements listed in ETA's procedural guidance.

Using ETA's *Employer Representative Declaration Form* to designate an employer representative for WOTC reduces the administrative burden for SWAs and employers by creating one standard form and set of instructions for all SWAs to implement. Additionally, this policy change accounts for states' varying levels of funding and staff capacity to manage employer representative declarations. ETA will provide technical assistance to WOTC State Coordinators and ETA Regional Coordinators on this new policy guidance and form instructions.

In conducting WOTC outreach activities, SWAs should educate WOTC employers and stakeholders on the updated procedural guidance and policies.

III. Request for Comments on Recommendations for WOTC Program Improvement

In addition to comments on the proposed procedural guidance changes described in Section II of this Notice, ETA is soliciting broader feedback from various stakeholders on ways to enhance and improve the WOTC program, including strategies and practices to improve the effectiveness and efficiency of WOTC as an incentive for employers to hire individuals with barriers to employment and as an employer subsidy to support successful hires, and improvements to the WOTC certification process. ETA has a strong interest in program improvements that could improve employment outcomes, including equitable access to and retention in good jobs and ensuring job quality, for the designated categories of workers (members of targeted groups). The Departments of Labor and Commerce recently published Good Jobs Principles, which set forth a shared vision of job quality. These Principles can be found at <https://www.dol.gov/general/good-jobs/principles>. What is a good job can be subjective, and these Principles may not be

applicable in all employment contexts; however, ETA expects to continue to use these Principles as the starting point of conversations about job quality. Community-based groups, unions and other worker organizations, employers, service providers, researchers, and advocates may have recommendations regarding these issues.

ETA requests that commenters address the questions listed below. Commenters do not need to address every question and should focus on those that relate to their expertise or perspective. To the extent possible, please clearly indicate the question(s) addressed in your response. Comments on program modifications may include activities, policies, practices, data collection or evaluations that are allowable and potentially feasible under current law and funding levels. Comments may also identify potential program improvements that would require changes in law, funding level, or administrative structure. Specifically, ETA is requesting comments on the following questions:

Recommendations for WOTC Program / Potential Improvement

- 1) To pre-screen a job applicant for WOTC eligibility, on or before the day that a job offer is made, a pre-screening notice (IRS Form 8850) must be completed by the job applicant and the employer. How do employers implement the job applicant pre-screening process for WOTC?
 - a) Do any aspects of the pre-screening process pose particular challenges?
 - b) How is WOTC reflected in employer hiring practices or policies?
 - c) Does the tax credit influence employer hiring decisions?
 - d) What improvements would better connect WOTC-eligible workers with employers and increase hiring?
- 2) Are WOTC monetary incentives sufficient to motivate employer participation in the WOTC certification process in order to receive the subsidy?

- 3) To what extent are stakeholders aware of the WOTC and how to utilize it – including small and mid-sized employers, employers that provide good jobs, advocates, and community-based groups or service providers that serve the targeted populations?
 - a) How can the Department of Labor increase awareness of the WOTC in the public workforce system and other human services and disability systems?
- 4) What is the biggest challenge employers face in seeking WOTC certifications for new hires? (e.g., completing forms, submitting forms timely to the SWA, collecting supporting documentation/information from job applicants).
- 5) What are the greatest challenges for SWAs in processing employers' certification requests?
- 6) What are the greatest challenges in the WOTC program and how might the Department of Labor address these challenges?
- 7) Should there be a mechanism to confirm that the employer pre-screens the job applicant, and obtains information provided by the job applicant on the basis of which the employer believes that the job applicant is a member of a targeted group?
- 8) How can the Department increase the likelihood that the WOTC results in greater hiring and retention for eligible workers, as well as the likelihood that these are good jobs, such as jobs with family-sustaining wages or equitable opportunities for advancement?
- 9) What does extant research and evaluation indicate regarding the effectiveness and efficiency of the WOTC or related hiring incentives, and what are potential implications of this information? How might the Department use this information to improve the WOTC?
 - a) What are critical gaps in the research and evaluation on WOTC?
 - b) What data sources and/or research methods would enable research and evaluation to address these gaps?

- c) What is the significance of WOTC in the hiring and retention of the broader eligible populations, and in comparison to other workforce investments that have similar employment outcome goals?
 - d) What key factors increase or inhibit employer claiming of the WOTC?
- 10) What new targeted group classifications, or modifications to existing targeted group eligibility requirements, would improve the effectiveness of the WOTC?

IV. Proposed FY 2024 Modifications to the WOTC Allotment Formula

ETA will establish the FY 2024 state allotment estimates based on modifications to the existing WOTC administrative formula, using the most recent state-level WOTC performance data, which is the annual certifications and denials issued by the SWAs, and the executed FY 2022 allotment amounts. The proposed allotment formula includes two formula factors: 1) number of annual determinations (certifications and denials) issued by the SWA for the most recently completed fiscal year's available data, based on certified performance data⁹ from ETA Form 9058, *Certification Workload and Characteristics of Certified Individuals*; and 2) each state's relative share of civilian labor force averages for the most recently completed fiscal year's available data. A description of how the data is used to calculate the state allotments using the proposed modified formula is provided below:

- **40 percent** based on each state's relative share of certifications issued for the most recently completed fiscal year's available data (October 1 – September 30),
- **40 percent** based on each state's relative share of denials issued for the most recently completed fiscal year's available data (October 1 – September 30), and

⁹ SWA annual performance data is available at <https://www.dol.gov/agencies/eta/wotc/performance>. ETA Form 9058 is available at <https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/ETA%20Form%209058.pdf>.

- **20 percent** based on each state's relative share of civilian labor force averages for the most recently completed fiscal year's available data (October 1 – September 30).

In addition to populating the administrative formula with updated data, ETA is proposing modifications that will improve the formula's accuracy in terms of estimating the true administrative workload of the SWA, and raise the minimum allotment to the states, which has been the same since the original formula was developed in 1996.

The current WOTC administrative formula bases 50 percent of states' annual allotments on each state's relative share of total WOTC certifications issued in the most recently completed fiscal year's available data (October 1 – September 30). 30 percent is based on each state's relative share of civilian labor force averages for the most recently completed fiscal year's available data, and 20 percent is based on each state's relative share of adult recipients of Temporary Assistance for Needy Families (TANF) averages from the second preceding fiscal year. WOTC was enacted in 1996 as an incentive for employers to hire members of families receiving TANF benefits, and other groups that experience significant barriers to employment, regardless of general economic conditions (Supplemental Nutrition Assistance Program (SNAP)/Food Stamps recipients, returning citizens, etc.). In 1997, Congress passed the Welfare-to-Work (WtW) tax credit, which focused specifically on more disadvantaged TANF recipients. The WtW credit became part of WOTC in 2006, and the emphasis on TANF recipients continued. Each state's relative share of adult recipients of TANF averages was factored into the WOTC administrative formula.

- 1) To use data that more accurately reflect the individuals certified under WOTC, the formula will no longer factor in states' share of adult TANF recipient averages. From FY 2009 – FY 2019, individuals certified as Qualified IV-A (TANF) recipients only accounted for 8 – 13 percent of annual certifications

issued. In comparison, individuals certified as SNAP recipients accounted for 54 - 73 percent of annual certifications issued (FY 2009 – FY 2022). Therefore, the updated allotment formula will not incorporate a state’s relative share of adult recipients for any specific targeted group. With this formula modification, the administrative workload of the SWA (annual certifications and denials issued) is the primary indicator used to determine fiscal year funding allotments.

- 2) Secondly, and to align the funding formula more closely with the SWAs’ workload, ETA will lessen the formula weight of the civilian labor force (CLF) averages used in the WOTC allotment formula. The CLF is the subset of the U.S. civilian noninstitutional population, ages 16 and older, that is classified as either employed or unemployed, in accordance with the concepts of the Current Population Survey.¹⁰ Currently, 30 percent of the WOTC administrative allotment formula is based on each states’ relative share of the CLF averages from the most recently completed fiscal year’s available data. Certification requests are submitted to the SWA of the state in which the employer’s business is located. States that have a higher volume of eligible employers participating in WOTC receive and process a higher volume of certification requests. States with larger population sizes (i.e., California, Florida, New York, and Texas) receive higher volumes of employer certification requests and therefore have a larger percentage of the national total workload and program output. The CLF average is useful as a proxy for determining the overall population/size of a state and provides some stability in the allotment formula that is not tied to the state’s WOTC performance data. As a result, ETA proposes modifying the allotment formula by lessening the weight of the CLF factor in the allotment formula. ETA believes that focusing on the SWA’s workload outcomes (certifications and denials issued) is a better

¹⁰ Data source: <https://www.bls.gov/cps/definitions.htm>

metric on which to base WOTC allotment allocations.

ETA is seeking public comment on the proposed modifications to the administrative formula. As with previous allocations of WOTC grant funds, updating the data sources used in the formula and discontinuing the use of adult TANF recipient averages as a calculation metric will result in changes to each state's relative share of federal funding. ETA mitigates large changes in state allotments by using the Stop-Loss/Stop-Gain provisions discussed in Section V.

V. Description of the Stop-Loss/Stop-Gain Provision

To mitigate and more gradually phase in state funding allotment changes due to the updated formula, ETA will continue to use the 95 percent stop-loss/120 percent stop-gain funding provisions in the WOTC allotment formula calculations. This approach is based on a state's previous year allotment percentage, which is its relative share of the total formula allotments. The stop-gain provision provides that no state grantee will receive an amount that is more than 120 percent of their previous year's allotment percentage. The stop-loss provision provides that no state grantee will receive an amount less than 95 percent of their previous year's allotment percentage. The current administrative formula is calculated with 95 percent stop-loss and 120 percent stop-gain provisions, and this will not change in the proposed modified formula for FY 2024 and subsequent years.

VI. Minimum Funding Provisions

Currently, after allocating \$20,000 to the U.S. Virgin Islands, ETA distributes the remaining appropriated fiscal year funding to state grantees by way of administrative formula, with a \$66,000 minimum allotment. Under the proposed new formula, the new state allotment minimum would be raised to \$119,000 (\$36,000 for U.S. Virgin

Islands).¹¹ Using the proposed new formula, some state grantees would receive up to a 20 percent increase of their FY 2022 allotment percentage in the new formula's implementation year, FY 2024. (The stop-gain provision provides that no state grantee will receive an amount that is more than 120 percent of their previous year's allotment percentage). In an effort to phase in the increased minimum allotment, which also impacts other states' allotments, ETA will use the stop-gain provision to gradually increase the minimum funding allotment amount to reach the new \$119,000 minimum. The minimum state allotment will increase to \$79,131 in FY 2024, which represents a 20 percent share increase from the current minimum of \$66,000, and increase by 20 percent each fiscal year, to reach the new \$119,000 minimum by FY 2026.¹² A state grantee that would receive less than \$119,000 by application of the FY 2024 formula will, at the option of ETA, continue to receive an allotment that is proportional to the SWA's current fiscal year allotment and anticipated administrative workload. ETA deems funding below \$119,000 as sufficient funding for SWAs that will receive the \$79,131 minimum allotment in FY 2024 and will not interfere with a SWA's ability to administer the WOTC program.

VII. FY 2024 Preliminary State Allotments

The state allotments set forth in the Table appended to this Notice reflect the distribution resulting from the revised allotment formula described above. In FY 2022, Congress appropriated \$18,485,000 in funding for state grantees (SWAs) to administer WOTC. The figures in the first numerical column show the actual FY 2022 formula allotments to state grantees. The next column shows the percentage of each states' allotment in proportion to the total funding appropriated. For purposes of illustrating the

¹¹ Based on calendar year 2021 inflation and cost of living increases since 1996, as determined by the Consumer Price Index (CPI) inflation calculator. Data Source: https://www.bls.gov/data/inflation_calculator.htm.

¹² WOTC is authorized until December 31, 2025, under the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), Division EE, Title I, Section 113.

effects of the updates to the allotment formula, column 3 shows the FY 2024 state grantee allotments with the application of the 95 percent stop-loss, 120 percent stop-gain and \$79,131 minimum funding provisions, followed by each state's relative share of total FY 2024 allotments in column 4. The percentage share difference between FY 2024 and FY 2022 allotments is shown in column 5.

U. S. Department of Labor
Employment and Training Administration
Work Opportunity Tax Credit (WOTC) State Allotment Grants
Impact of Proposed Changes on FY 2024 Allotments to States

	FY 2022		FY 2024		
			Using Stop-Loss/Stop-Gain		
State	Allotment	Percentage Share	Allotment	Percentage Share	% Share Difference (FY24 vs FY22)
	(1)	(2)	(3)	(4)	(5)
Total	\$18,485,000	100%	\$18,485,000	100%	+/-
Alabama	290,402	1.6%	275,643	1.5%	-5.0%
Alaska	66,000	0.4%	79,131	0.4%	20.0%
Arizona	286,961	1.6%	272,377	1.5%	-5.0%
Arkansas	136,147	0.7%	143,824	0.8%	5.7%
California	2,423,147	13.1%	2,299,995	12.5%	-5.0%
Colorado	315,145	1.7%	299,128	1.6%	-5.0%
Connecticut	150,908	0.8%	180,933	1.0%	20.0%
Delaware	85,229	0.5%	102,186	0.6%	20.0%
Dist. of Columbia	66,000	0.4%	79,131	0.4%	20.0%
Florida	830,118	4.5%	909,221	4.9%	9.6%
Georgia	507,265	2.7%	481,484	2.6%	-5.0%
Hawaii	69,506	0.4%	83,335	0.5%	20.0%
Idaho	78,682	0.4%	94,337	0.5%	20.0%
Illinois	743,297	4.0%	705,520	3.8%	-5.0%
Indiana	287,632	1.6%	273,014	1.5%	-5.0%
Iowa	230,290	1.2%	218,586	1.2%	-5.0%
Kansas	122,420	0.7%	144,593	0.8%	18.2%
Kentucky	372,478	2.0%	353,547	1.9%	-5.0%
Louisiana	303,161	1.6%	287,753	1.6%	-5.0%
Maine	68,617	0.4%	82,269	0.4%	20.0%
Maryland	419,689	2.3%	398,359	2.2%	-5.0%
Massachusetts	400,530	2.2%	380,174	2.1%	-5.0%
Michigan	604,874	3.3%	574,132	3.1%	-5.0%
Minnesota	292,845	1.6%	277,962	1.5%	-5.0%
Mississippi	218,305	1.2%	207,210	1.1%	-5.0%
Missouri	398,548	2.2%	378,293	2.1%	-5.0%
Montana	66,000	0.4%	79,131	0.4%	20.0%
Nebraska	140,394	0.8%	133,259	0.7%	-5.0%
Nevada	157,767	0.9%	149,749	0.8%	-5.0%
New Hampshire	66,000	0.4%	79,131	0.4%	20.0%
New Jersey	337,889	1.8%	320,716	1.7%	-5.0%
New Mexico	162,673	0.9%	154,405	0.8%	-5.0%
New York	1,104,812	6.0%	1,048,662	5.7%	-5.0%

North Carolina	477,001	2.6%	571,905	3.1%	20.0%
North Dakota	66,000	0.4%	79,131	0.4%	20.0%
Ohio	700,755	3.8%	665,140	3.6%	-5.0%
Oklahoma	274,022	1.5%	260,095	1.4%	-5.0%
Oregon	274,174	1.5%	260,240	1.4%	-5.0%
Pennsylvania	748,005	4.1%	709,989	3.8%	-5.0%
Puerto Rico	77,585	0.4%	93,021	0.5%	20.0%
Rhode Island	75,240	0.4%	90,210	0.5%	20.0%
So. Carolina	263,650	1.4%	250,250	1.4%	-5.0%
South Dakota	66,000	0.4%	79,131	0.4%	20.0%
Tennessee	688,169	3.7%	653,194	3.5%	-5.0%
Texas	1,379,023	7.5%	1,653,394	9.0%	20.0%
Utah	114,167	0.6%	119,000	0.6%	4.3%
Vermont	66,000	0.4%	79,131	0.4%	20.0%
Virginia	435,789	2.4%	413,641	2.2%	-5.0%
Washington	437,804	2.4%	415,553	2.3%	-5.0%
W. Virginia	124,597	0.7%	119,000	0.6%	-4.4%
Wisconsin	327,288	1.8%	310,654	1.7%	-5.0%
Wyoming	66,000	0.4%	79,131	0.4%	20.0%
Total	18,465,000	100%	18,449,000	100%	--
Virgin Islands (non-formula)	20,000		36,000		

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Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

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